

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on April 21, 2004. Although Applicants believe all original claims are allowable over the prior art of record, to expedite issuance of the patent, Applicants have made clarifying amendments to Claims 1, 3, 5, 8, 11, 12, 17, and 22. Claim 10 stands cancelled without prejudice or disclaimer. Certain of these amendments have not narrowed the claims and none are considered necessary for patentability. Favorable action is requested.

Double Patenting Rejection

The Office Action makes an obviousness-type double patenting rejection based on U.S. Patent No. 6,360,279 issued to Woods et al. ("Woods") in view of U.S. Patent No. 5,761,507 issued to Govett, et al. ("Govett"). The Examiner bases the rejection on *Woods*, and appears to be attempting to use *Govett* to assert that the present claims are obvious variations of the inventions disclosed in *Woods*. Applicants respectfully disagree with the Examiner's basis for the rejection, and further submit that *Govett* is not a proper reference on which a double patenting rejection can be based because the present Application and *Govett* neither shares a common inventor nor has common ownership which are both required for a reference to support a double patenting rejection. However, Applicants stand willing to file a terminal disclaimer with regard to *Woods* upon an indication of allowable subject matter to advance the prosecution of this case if the Examiner maintains the double patenting rejection despite the reasons stated above.

Section 112 Rejections

The Office Action rejects Claims 1-9 and 11-23 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed. For example, in rejecting Claim 5, the Office Action appears to indicate that the originally-filed Application does not describe the following limitations of Claim 5: (1) "accepting each pending request from the buffer, in parallel, with the plurality of handler processes when the number of handler processes

exceeds the number of pending requests,” and (2) “accepting a number of pending requests substantially equal to the number of handler processes when the number of pending requests exceeds or equals the number of handler processes.” On the same basis, the Office Action also indicates that the specification is objected to under 35 U.S.C. §112, paragraph 1, as failing to adequately teach the identified claimed limitations.

Claim 5 is amended to remove the second identified limitation to advance the prosecution of this case. However, Applicants respectfully submit that the first identified limitation of “accepting each pending request from the buffer, in parallel, with the plurality of handler processes when the number of handler processes exceeds the number of pending requests” is in fact described in the originally-filed Application. For example, page 14, lines 20-25, of the originally-filed Application states that “the result of parallel request acceptance is that for any given request one or more handler processes 62 may attempt to accept that particular request simultaneously or very close to one another in time. Often, there will be fewer pending requests than there are handler processes 62 attempting to accept those requests.” [emphasis added]. Because the original specification in fact discloses accepting requests when the handler processes outnumber the pending requests, the identified limitation of Claim 5 meets the written description requirement. As such, the Section 112, paragraph 1 rejection of Claim 5 should be withdrawn. Claims 1, 11, 12, 17, 22 have been analogously amended, and for reasons analogous to those provided in conjunction with Claim 5, the section 112, paragraph 1 rejection of Claims 1, 11, 12, 17, 22, and all of their dependent claims should also be withdrawn. Further, in view of the amendments to Claims 1, 5, 11, 12, 17, 22, and the arguments provided above in conjunction with Claim 5, the objection to the specification should be withdrawn. Reconsideration and favorable action are requested.

The Office Action rejects Claims 3 and 8 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Office Action indicates that it is not clear whether the limitation of “load balancing” includes the increasing or decreasing of the number of handler processes. To advance the prosecution of this case, Applicants amend Claims 3 and 8 to remove the limitation of “such operations known as load balancing.” Thus, the rejection of Claims 3 and 8 under 35 U.S.C. §112, second paragraph, should be withdrawn. Favorable action is requested.

Section 103 Rejections

Claims 1-9 and 11-23 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,761,507 issued to Govett et al. (“*Govett*”) in view of U.S. Patent No. 5,428,781 issued to Duault, et al. (“*Duault*”). Applicants respectfully submit that the rejection of these claims is improper for reasons provided below.

Claim 5 is allowable because neither *Govett* nor *Duault* discloses, teaches, or suggests “accepting each pending request . . . with the plurality of handler processes when the number of handler processes exceeds the number of pending requests,” [emphasis added] as recited by Claim 5. The Office Action appears to suggest that *Govett* shows this missing limitation in Column 6, Lines 53-59 and Column 11, Lines 35-37, if these portions of *Govett* are read with the suggested assumption that “. . . ‘server min’ is configured as two or more and one request is received.”

Applicants respectfully submit that these assertions of the Office Action are incorrect. Column 6, lines 53-59 of *Govett*, which is identified as showing the limitation of “accepting each pending request . . . with the plurality of handler processes . . . ,” in fact shows directing a request to a server, but does not disclose, teach, or suggest accepting each pending request with the plurality of handler processes. As used in *Govett*, a “server” does not show a handler process. For example, in one embodiment of the invention, the present Application describes a process as “an executing or executable program.” (See Page 10, Lines 4-5 of the present Application). Because a “server” of *Govett* is not a program, the identified portion of *Govett* does not disclose, teach, or suggest the missing limitation. At least for this reason, Claim 5 is allowable.

Column 11, Lines 35-37 of *Govett*, which is identified as showing the limitation of “accepting each pending request . . . when the number of handler processes exceeds the number of pending requests,” also does not show such a limitation. A careful reading of the identified portion of *Govett* reveals that the identified portion in fact discloses registering XMAN, a transaction manager, when one of the “server min” servers is started and can receive a client request. (See Column 11, Lines 35-37 - “Specifically, when a server (e.g. one of the number of servers specified by server min) has been started and can service a client request, it is necessary that XMAN (but not the individual sever as in SumRPC) be registered

with the post mapper 16', 18'." [emphasis added]). Even if it is assumed for the sake of argument that a "server" of *Govett* is a "process," which it is not, a description indicating that one of the "service min" servers triggers a registration of a transaction manager when that one server can service a request does not constitute a disclosure of accepting each pending request with a plurality of handler processes when the number of handler processes exceeds the number of pending requests, regardless of whether "server min" is assumed to be two or more servers as suggested in the Office Action. *Duault* also does not teach these missing limitations, and the Examiner does not assert that it does. Because the missing limitations are not shown by either of the cited references, Claim 5 is allowable. Reconsideration and favorable action are requested.

For reasons analogous to those provided in conjunction with Claim 5, Applicants also respectfully request reconsideration and allowance of independent Claims 1, 11, 12, 17, 22, together with their dependent claims.

Applicants' dependent claims are allowable based on their dependence on the independent claims and further because they recite numerous additional patentable distinctions over the references of the rejection. Because Applicants believe they have amply demonstrated the allowability of the independent claims over the references of the rejection, and to avoid burdening the record, Applicants have not provided additional detailed remarks concerning these dependent claims. Applicants, however, remain ready to provide such remarks if it becomes appropriate to do so.

CONCLUSION

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

Applicants do not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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